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April 5, 2016

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: *Senate Bill 191, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2016, and the Maryland Consolidated Capital Bond Loans of 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015"*

Dear Governor Hogan:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 191, "Creation of a State Debt - Maryland Consolidated Capital Bond Loan of 2016, and the Maryland Consolidated Capital Bond Loans of 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015." In reviewing the bill, we have noted some technical and legal issues that we discuss below.

Section 1(9) of the bill authorizes the Board of Public Works ("BPW") to approve appropriations notwithstanding technical differences in the name of the grantee or the description or location of the project, provided that the proposed use of funds is consistent with the public purpose of the original appropriation and the location of the project is within the county specified in the appropriation. Section 1(9)(a). Prior to BPW approval, the Department of Budget and Management ("DBM") shall notify the Office of Policy Analysis ("OPA") within the Department of Legislative Services in writing of (1) the "technical differences between [the] appropriation ... and the proposed use of funds" and (2) the "justification that the proposed use of funds is consistent with the public purpose of the appropriation." Section 1(9)(b). OPA shall have 45 days to review and comment on the proposal. Section 1(9)(c)(i). If OPA does not submit written objections within 45 days, DBM "shall provide certification in writing to the Board of Public Works that the proposed use of funds may be approved" Section 1(9)(c)(ii).

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To the extent that Section 1(9)(c) might be construed as allowing OPA to reject a proposed use of funds, the provision likely would be viewed as an impermissible “legislative veto.” As OPA is an agency of the General Assembly,¹ OPA’s rejection of a proposed use of funds would constitute a legislative reversal through non-legislative action. *See Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). Accordingly, Section 1(9) of the bill should be construed as providing OPA with a 45-day review and comment period after which BPW may approve the proposed use of funds, notwithstanding comments provided by OPA, so long as the proposed use satisfies the criteria of Section 1(9).

Section 12 of the bill authorizes the Board of Public Works to incur indebtedness on behalf of the State through a loan to be known as the Maryland Consolidated Capital Bond Loan Preauthorization Act of 2017, the purpose of which is to provide funds for specific projects and programs identified in the bill. We note that there is a discrepancy between the principal amount of the 2017 preauthorization loan and the total amount allocated for the enumerated projects. On page 115, in line 22, the stated total principal amount of the loan is \$466,508,000. However, the total amount allocated for the projects listed in the bill is \$464,237,000. Accordingly, the stated total principal amount of the loan should be corrected in the 2017 Maryland Consolidated Capital Bond Loan bill.

Lastly, throughout the bill there appear to be some minor mistakes in the names of grantees. We have determined, however, that they lead to no ambiguity and may be corrected administratively or through the procedures established by Section 1(9) of the bill.

Sincerely,



Brian E. Frosh
Attorney General

BEF/DS/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Warren Deschenaux

¹ OPA is a unit of the Department of Legislative Services in the Legislative Branch of State government. State Government Article, §§ 2-1202 and 2-1206.